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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MICHEL SAYAG

Appeal 2009-002451
Application 10/789,547
Technology Center 2800

Decided:[1] June 15, 2009

Before EDWARD C. KIMLIN, BRADLEY R. GARRIS, and
MARK NAGUMO, *Administrative Patent Judges*.

KIMLIN, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1 and 9-22.

Claims 2-8, the other claims remaining in the present application, have been

[1] The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

objected to by the Examiner as being dependent on a rejected claim but containing allowable subject matter. Claim 1 is illustrative:

1. An integrated x-ray image capture and readout system, comprising:

a cassette enclosure having a form factor corresponding to a standard radiographic film cassette, the form factor corresponding to a thickness of the cassette enclosure of about 0.6 inches;

a storage-phosphor plate operable to capture incident x-rays corresponding to an image;

a stimulating light source operable to expose a surface of the storage-phosphor plate to stimulating light;

an array of detectors positioned to receive stimulated light via the surface of the storage-phosphor plate, the stimulated light being released from the storage-phosphor plate in response to the stimulating light; and

an actuator assembly operable to effect relative motion between the surface of the storage-phosphor plate and each of the stimulating light source and the array of detectors in one dimension;

wherein the storage-phosphor plate, the stimulating light source, the array of detectors, and the actuator assembly are enclosed in the cassette enclosure.

The Examiner relies upon the following references as evidence of obviousness:

Alvarez	5,221,843	Jun. 22, 1993
Dewaele	5,757,021	May 26, 1998
Karellas	5,864,146	Jan. 26, 1999
Mueller	WO 99/28765	Jun. 10, 1999
Budinski	5,912,944	Jun. 15, 1999
Floresta	6,239,516 B1	May 29, 2001
Mueller	6,373,074 B1	Apr. 16, 2002

Cassettes for medical X-ray diagnosis – Radiographic cassettes and mammographic cassettes, 3rd Edition (1997-02) of IEC 60406, pp. 1-37 (1997).

Appellant's claimed invention is directed an intergrated x-ray image capture and readout system comprising, inter alia, a cassette enclosure having a form factor which corresponds to a thickness of about 0.6 inches for the cassette enclosure.

The appealed claims stand rejected under 35 U.S.C. § 103(a) as follows:

(a) claims 1, 9, 11, 12, and 20 over Mueller in view of Alvarez and IEC,

(b) claims 16-19 over the references cited in (a) above further in view of Karellas,

(c) claim 10 over the references cited in (a) above further in view of Floresta,

(d) claims 13-15 over the references cited in (a) above further in view of Dewaele,

(e) claim 21 over the references cited in (a) above further in view of Floresta, and

(f) claim 22 over the references cited in (a) above further in view of the admitted prior art.

We have thoroughly reviewed the respective positions advanced by Appellant and the Examiner. In so doing, we find ourselves in agreement with Appellant that the Examiner has failed to establish prima facie case of obviousness for the claimed subject matter. Accordingly, we will not sustain the Examiner's rejections.

We agree with Appellant that Mueller, the primary reference in all the rejections before us, does not teach or suggest a cassette enclosure having a thickness of about 0.6 inches, or 15.2 mm, as presently claimed. Mueller discloses an X-ray cassette that contains a device for reading out information stored in a phosphor carrier which comprises "a very short distance between phosphor carrier and receiving device, which in turn greatly improves the degree of compactness of the device" (col. 3, ll. 45-47). In particular, Mueller teaches that "the x-ray cassette can be manufactured with very small dimensions [and that] [i]t is possible to limit the thickness the x-ray cassette to about 45 mm such that it can even be insertable in conventional x-ray units already in operation" (col. 10, ll. 53-57).

Hence, we agree with Appellant that one of ordinary skill in the art would reasonably interpret Mueller as teaching a lower limit of 45 mm thickness, i.e., Mueller would not state a thickness limit of 45 mm if the cassette could reasonably be thinner. As emphasized by Appellant, Mueller's lower thickness limit is about three times greater than the claimed thickness. Also, as explained by Appellant, the thickness of Mueller's cassette is limited due to its accommodation of a lens system, whereas the present system responds to laterally diffused light energy which "allows for embodiment without bulky intervening optical elements" (page 6 of Brief, alternate paragraph). We can not subscribe to the Examiner's rationale that the 45 mm thickness disclosed by Mueller "is merely an example of the very small dimensions of the x-ray cassette" (page 13 of Answer, first paragraph).

Since limiting the size of the cassette is a desired goal of Mueller, we agree with Appellant that Mueller would have provided some teaching or

suggestion that the x-ray cassette could have a thickness at least three times smaller than the value disclosed if such a smaller thickness were envisaged by the inventor.. No such teaching or suggestion, however, is apparent in the Mueller disclosure.

The Examiner states "IEC 06406 provides example of radiographic film cassette thickness of 15 mm, 16.5 mm, and 20.5 mm" (page 6, of Answer first paragraph). However, the existence of radiographic film cassettes having the claimed thickness does not provide the requisite evidence that the system of Mueller employs a cassette of such thickness. Indeed, the claimed cassette enclosure corresponds to a standard radiographic film cassette.

Also, although Mueller states that an optical reproduction device "can be" provided in the cassette, the reference provides no embodiments wherein an optical system corresponding to element 14 of figure 1 is not incorporated in the cassette. The Examiner's citation of the words "can be" is not sufficient to establish the optional nature of the optical element, and the Examiner has not refuted the analysis provided in the inventor's declaration with respect to the necessity of an optical system in the Mueller cassette.

The remaining references cited by the Examiner do not remedy the deficiencies of Mueller discussed above.

In conclusion, based on the foregoing, we are constrained to reverse the Examiner's rejections.

REVERSED

PL initial:
sld

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